

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE COMMONWEALTH OF  
MASSACHUSETTS, et al.

Defendants, and

THE COALITION FOR BUZZARDS BAY,

Intervenor-Defendant

\_\_\_\_\_  
THE AMERICAN WATERWAYS OPERATORS,  
et al.

Intervenor-Plaintiff

v.

MITT ROMNEY, Governor of Massachusetts, et al.

Defendants

Civil Action No. 05-10112 JLT

**DISCLOSURES OF INTERVENOR-DEFENDANT  
THE COALITION FOR BUZZARDS BAY**

In accordance with the Court's January 23, 2006 "Discovery Order," Intervenor-Defendant The Coalition for Buzzards Bay ("The Coalition"), hereby submits the following disclosures of information required by Local Rule 26.1(B)(2) and Local Rule 26.2(A).

**INITIAL DISCLOSURES PURSUANT TO LOCAL RULE 26.2(A)**

Pursuant to Local Rule 26.2(A), Fed. R. Civ. P. 26(a)(1) and this Court's Discovery Order of January 23, 2006, and subject to the Reservation of Rights, below, Intervenor-Defendant The Coalition hereby submits its initial disclosures.

**Disclosure Pursuant to Fed. R. Civ. P. 26(a)(1)(A)**

The Coalition has identified in its sworn statement made pursuant to Local Rule 26.1(B)(2), *infra*, the individuals likely to have discoverable information that The Coalition may use to support its defenses, unless solely for impeachment, and/or the individuals likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings. Thus, subject to and without waiver of their right to amend, correct, and/or supplement these disclosures, The Coalition references its Local Rule 26.1(B)(2) Sworn Statement, *infra*.

**Disclosure Pursuant to Fed. R. Civ. P. 26(a)(1)(B)**

The below-listed categories of documents may be used by The Coalition to support their defenses and/or are relevant to disputed facts alleged with particularity in the pleadings. These documents are located at the offices of Foley Hoag LLP or are otherwise within the custody and control of The Coalition and will be made available to all parties.

1. Documents regarding the peculiarities and particularities of Buzzards Bay, including but not limited to those regarding the topography and ecological significance of the Bay and the transport of petroleum products through the Bay;
2. Documents regarding the Bouchard-120 Buzzards Bay Oil Spill, including but not limited to documents associated with the case *United States v. Bouchard Transportation Company*, documents regarding the cleanup following the oil spill, and news articles and electronically available documents;
3. Documents regarding the passage and validity of the Oil Spill Prevention Act and related regulations, including documents providing and/or summarizing public testimony, meeting minutes and correspondence;
4. Regional Risk Assessment of Petroleum Transportation on the Waters of the Northeast United States;
5. Documents related to the development and promulgation of regulations related to the First District Regulated Navigation Area, including but not limited to federal register notices, public laws and documents regarding the Rhode Island Tank Vessel Safety Act;

6. Documents related to the Ports and Waterways Safety Assessment Workshop for Buzzards Bay, including but not limited to the Ports and Waterways Safety Assessment Workshop Report and comments on the same;

7. Documents related to the Advanced Notice of Proposed Rulemaking: Navigation and Waterways Management Improvements, Buzzards Bay, including but not limited to federal register notices, public comment documents, correspondence;

8. Documents regarding Massachusetts General Law 103: Pilots, including but not limited to rules and regulations regarding same;

9. Documents related to the inspection of towing vessels, including but not limited to federal register notices, United States Coast Guard directives, public comment documents and federal regulations;

10. Documents related to compliance with the Financial Assurance Provision of the Oil Spill Prevention Act, including but not limited to documents providing and/or summarizing public testimony and information on protection and indemnity clubs;

11. Documents regarding recommended vessel routes in Buzzards Bay, including but not limited to National Ocean Service-U.S. Coast Pilot publications and e-mail correspondence between representatives of the U.S. Coast Guard and The Coalition.

**Disclosure Pursuant to Fed. R. Civ. P. 26(a)(1)(C)**

The Coalition has not sought damages against the Plaintiff or Plaintiff-Intervenor.

**Disclosure Pursuant to Fed. R. Civ. P. 26(a)(1)(D)**

The Defendants are unaware of any insurance agreements that provide coverage for the claims at issue.

**RESERVATION OF RIGHTS**

These initial disclosures are based upon a good faith inquiry; The Coalition's efforts to identify relevant witnesses and documents are ongoing. Accordingly, The Coalition reserves its right to amend, correct, and/or supplement these disclosures in light of any additional information that may become available. The Coalition does not waive, but expressly reserves without limitation, any and all objections under the attorney-client privilege, work product

doctrine, or any other such privilege or immunity from discovery, and any and all objections to the appropriateness and/or scope of discovery.

**SWORN STATEMENT PURSUANT TO L.R. 26.1(B)(2)**

**Individuals Known or Believed To Have Information**

Subject to the Qualifications listed below, The Coalition states, pursuant to Local Rule 26.1(B)(2)(a), that it knows of the following persons who are known or believed to have witnessed the occurrences giving rise to the claim or who are known or believed to have information about the claims or defenses. Persons and entities listed under one subject matter may have information with respect to other subject matters as well.

1. Persons who are believed to have knowledge regarding the development of the Regulated Navigation Area: Navigable Waters Within the First Coast Guard District, codified at 33 C. F. R. 165.100. They include:

- a. Captain E.J. Williams III, Chief, Marine Safety Division, First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110-3350;
- b. Linda O'Leary, Vice President - Atlantic Region, The American Waterways Operators, 241 Water Street, New York, NY 10038, Tel. No. (212) 406-1884;
- c. John Torgan, Narragansett BayKeeper, Save the Bay (Rhode Island), Save The Bay Center, 100 Save The Bay Dr., Providence, RI 02905, Tel. No. (401) 272-3540;
- d. Stephen Morin, Assistant to the Director, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767 (Current address unknown);

- e. Lieutenant Rich Klein, c/o Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210-3350;
- f. Additional Regional Risk Assessment Team (“RRAT”) Members.

2. Persons who are believed to have knowledge regarding the Coast Guard’s Advance Notice of Proposed Rulemaking (“ANPR”) regarding Navigation and Waterways Management Improvements, Buzzards Bay, MA, as noticed on October 26, 2004 at 69 Fed. Reg. 62427, including but not limited to the issues identified in the ANPR and the progress of and rationale for the proposed rulemaking. They include:

- a. David Pekoske, Rear Admiral, USCG, Commander, First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110-3350, Tel. No. (617) 223-8555;
- b. Edward G. LeBlanc, C.O., USCG Marine Safety Office, 20 Risho Avenue, East Providence, R.I. 02914-1208, Tel. No. (401) 435-2351;
- c. Captain Mary E. Landry, Chief, Protection Division, First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110-3350, Tel. No. (617) 223-8555;
- d. Captain Fred Kenney, District Legal Officer, First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110-3350, Tel. No. (617) 223-8500;
- e. Participants, observers and facilitators in the Ports and Waterways Safety Assessment (“PAWSA”) Workshop.

3. Individuals who are believed to have knowledge regarding the Coast Guard’s Notice: Request for Public Comments, and Notice of Public Meeting regarding the Inspection of Towing Vessels, as noticed on December 30, 2004 at 69 Fed. Reg. 78471 and/or the impact such regulations would have on the determination on whether a vessel is “subject to inspection.”

They include:

- a. Thomas Scott Kuhaneck, Domestic Vessel Compliance Division, Office of Compliance, United States Coast Guard, Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593, Tel. No. (202) 267-0240;

- b. Mike Karr, Chief, Office of Compliance, United States Coast Guard, Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593;
- c. Kathryn Sinniger, Office of Regulations, Administrative Law, United States Coast Guard, Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593;
- d. Dave Dolloff, Standards Division, United States Coast Guard, Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593.

4. Persons who are believed to have knowledge regarding the impacts that the Financial Assurance Provision are anticipated to have on the behavior of commercial vessel owners. They include:

- a. Harold E. Mesirow, Esq., Counsel to International Group of Protection and Indemnity Clubs, Troutman and Sanders LLP, 401 Ninth Street NW Suite 1000, Washington, DC 20004;
- b. Bradford Card, Dutko Worldwide, 412 First Street, SE, Suite 100, Washington, D.C. 20003.

5. Persons who are believed to have knowledge regarding the burden that the Manning Provision will impose on commercial vessel owners. They include:

- a. Ben Bryant, Marine Policy Specialist, The Coalition for Buzzards Bay, 620 Belleville Avenue, New Bedford, MA 02745, Tel. No. (508) 999-6363;
- b. Captain Arthur J. Fournier, Canal Towing & Assist Service, LLC, Massachusetts Maritime Dock, On the Cape Cod Canal, PO Box 332, Buzzards Bay, MA 02532;
- c. Captain Lawrence Palmer, Pilot, Northeast Marine Pilots, Inc. 243 Spring Street, Newport, RI 02840, Tel. No. (401) 847 - 9050

6. Individuals who are believed to have knowledge regarding current enforcement of the Massachusetts Oil Spill Prevention Act and/or the impacts thereof. They include:

- a. Ben Bryant, Marine Policy Specialist, The Coalition for Buzzards Bay, 620 Belleville Avenue, New Bedford, MA 02745, Tel. No. (508) 999-6363;

- b. Richard Packard, Massachusetts Department of Environmental Protection, Southeast Regional Office, 20 Riverside Drive, Lakeville, MA 02347, Tel. No. (617) 556-1049;
- c. Captain Arthur J. Fournier, Canal Towing & Assist Service, LLC, Massachusetts Maritime Dock, On the Cape Cod Canal, PO Box 332, Buzzards Bay, MA 02532.

7. Hundreds of people are believed to have knowledge of the particularities of Buzzards Bay, including but not limited to the topography of the Bay, the ecological significance of the Bay, the volume of petroleum products transported through the Bay, the types of vessels in which petroleum products are transported through the Bay and the history of maritime incidents involving petroleum products that have occurred in the Bay. They include, but are not limited to:

- a. Mark Rasmussen, Executive Director, The Coalition for Buzzards Bay, 620 Belleville Avenue, New Bedford, MA 02745, Tel. No. (508) 999-6363;
- b. Ben Bryant, Marine Policy Specialist, The Coalition for Buzzards Bay, 620 Belleville Avenue, New Bedford, MA 02745, Tel. No. (508) 999-6363;
- c. Fran Donovan, United States Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751, Tel. No. (978) 318-8111;
- d. Dr. Brian Howes, School of Marine Science and Technology, 706 South Rodney French Blvd. New Bedford, MA 02744;
- e. Captain Lawrence Palmer, Pilot, Northeast Marine Pilots, Inc. 243 Spring Street, Newport, RI 02840, Tel. No. (401) 847-9050;
- f. Joseph E. Costa, Executive Director, Buzzards Bay Project National Estuary Program, 2870 Cranberry Highway, E. Wareham, MA 02538, Tel. No. (508) 291-3625.

8. Hundreds of people are believed to have knowledge of the events surrounding the Bouchard-120 Oil Spill in Buzzards Bay, the response thereto and the effects thereof. They include, but are not limited to:

- a. Mark Rasmussen, Executive Director, The Coalition for Buzzards Bay, 620 Belleville Avenue, New Bedford, MA 02745, Tel. No. (508) 999-6363;
- b. Captain Mary E. Landry, Chief, Protection Division, First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110-3350, Tel. No. (617) 223-8555;
- c. Richard Packard, Massachusetts Department of Environmental Protection, Southeast Regional Office, 20 Riverside Drive, Lakeville, MA 02347, Tel. No. (617) 556-1049;
- d. Christopher M. Reddy, Associate Scientist Woods Hole Oceanographic Institution, Marine Chemistry and Geochemistry, MS #4 Woods Hole, MA 02543, Tel. No. (508) 289-2316;
- e. Timothy Francis, Fairhaven Fire Department, 146 Washington Street, Fairhaven, MA;
- f. Chief Ronald E. Scott, Mattapoisett Fire Department, 26 County Road, Mattapoisett, MA 02739;
- g. Kevin Trainer, C.P.G., P.G., L.S.P., Senior Project Geologist, Geo Insight, Inc. 319 Littleton Road, Suite 105 Westford, MA 01886, Tel. No. (978) 692-1114;
- h. Joshua S. Levy, Assistant U.S. Attorney, Criminal Division, John Joseph Moakley United States Courthouse, Suite 9200, 1 Courthouse Way, Boston, MA 02210, Tel. No. (617) 748-3100;
- i. Nadine Pellegrini, Assistant U.S. Attorney, Criminal Division John Joseph Moakley United States Courthouse, Suite 9200, 1 Courthouse Way, Boston, MA 02210, Tel. No. (617) 748-3100;
- j. Peter Kenyon, Senior Criminal Enforcement Counsel, Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114-2023, Tel. No. (617) 918-1723.

### **Opposing Party Statements**

The Coalition has not obtained statements regarding the subject matter of its defenses from any opposing parties, or any officers, directors, or employees of opposing parties.



**Governmental Agencies or Officials**

The Coalition believes that the United States Coast Guard, the United States Department of Justice and the Massachusetts Department of Environmental Protection investigated the Bouchard-120 Buzzards Bay Oil Spill.

**QUALIFICATIONS**

This Sworn Statement is based on information currently known to The Coalition and is made without prejudice to producing, during discovery or at trial, such information that is: (i) subsequently discovered; (ii) subsequently determined to be relevant; or (iii) subsequently determined to have been omitted from these disclosures. The Coalition's fact investigation is ongoing. The Coalition anticipates that it may, in the course of such investigation, learn that additional individuals witnessed the occurrences giving rise to the claim or have information about the claims or defenses, or that individuals identified below may have information beyond the subject matters specifically identified herein. The Coalition respectfully requests the opportunity to revise and supplement this Sworn Statement should it become aware of additional responsive information.

The Coalition expressly reserves all objections to the use of this Sworn Statement or any of the information referenced herein for any purpose in this case or any other case or proceeding.

By identifying persons or entities in this Sworn Statement, The Coalition makes no representations or concessions regarding the knowledge or competence of any particular individual or entity and expressly reserves the right to object on any grounds, including but not limited to relevance, burden, and competence, to the deposition or testimony of any individual or entity.

THE COALITION FOR BUZZARDS BAY

By its attorneys,

/s/ Jonathan M. Ettinger

Jonathan M. Ettinger (BBO #552136)

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Dated: February 13, 2006

### **VERIFICATION**

I, Korrin Petersen, state that I have read the foregoing Sworn Statement, pursuant to Rule 26.1 of the Local Rules of the United States District Court for the District of Massachusetts, and I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed under penalty of perjury this 13<sup>th</sup> day of February, 2006, Boston, Massachusetts.

### **THE COALITION FOR BUZZARDS BAY**

By: /s/ Korrin Petersen (by permission

/s/ Jonathan M. Ettinger)

Korrin Petersen, Advocacy Director

The Coalition for Buzzards Bay

620 Belleville Avenue, New Bedford, MA 02745